

**Economic and Social Council**

Distr.: General
16 March 2021
English
Original: Spanish

Committee on Economic, Social and Cultural Rights**Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 85/2018***

<i>Communication submitted by:</i>	Hakima El Goumari and Ahmed Tidli
<i>Alleged victims:</i>	The authors and their children
<i>State party:</i>	Spain
<i>Date of communication:</i>	12 May 2018 (initial submission)
<i>Date of adoption of Views:</i>	18 February 2021
<i>Subject matter:</i>	Eviction of the authors from their home
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Article of the Optional Protocol:</i>	3 (1)

* Adopted by the Committee at its sixty-ninth session (15 February–5 March 2021).



1.1 The authors of the communication are Hakima El Goumari, born in 1981, and Ahmed Tidli, born in 1971. Both are nationals of Morocco and have resided in the State party for over 25 years. The authors are acting on their own behalf and on behalf of their four children (Ho.T., M.T., Ha.T. and A.T.), all nationals of Morocco, and born in 2002, 2006, 2008 and 2014, respectively. The authors claim that the State party has violated their rights and those of their children under article 11 (1) of the Covenant. The Optional Protocol entered into force for the State party on 5 May 2013. The authors are not represented by counsel.

1.2 In the present Views, the Committee will first summarize the information and the arguments submitted by the parties, without taking a position. It will then consider the admissibility and the merits of the communication and, lastly, set out its conclusions and recommendations.

A. Summary of the information and arguments submitted by the parties

The facts as presented by the authors¹

Before the communication was registered

2.1 The authors claim that, on 1 January 2015, they entered into a rental agreement with a real estate company for a home with a monthly rent of €480. After Mr. Tidli lost his job in 2016, his only income was a minimum subsistence income of €735.90 per month, which he had been receiving since 2004. Since that was the family's only income, the authors were forced to stop paying rent.

2.2 On 26 July 2017, the authors were served with a complaint that had been filed with the Court of First Instance No. 69 of Madrid and that urged them to leave the unit and pay the rent due or else to lodge an objection to the complaint. On 25 January 2018, the Court handed down decision No. 19/2018, declaring the rental agreement terminated for non-payment and ordering the authors to leave the unit and pay the rent due, together with the costs of the proceedings.

2.3 On 5 March 2018, the authors applied for a stay of eviction and, on 7 March 2018, the social services submitted a report explicitly requesting a suspension of the eviction order and pointing out the risk of social exclusion for the family and the 45 per cent and 10 per cent disability levels of their second child and third child, respectively. The authors' application was rejected on 9 March 2018, and they were notified of a decision that set their eviction date for 15 March 2018. In its decision rejecting the authors' application, the Court recalls that the owner has made multiple requests for payment of rent, all of which have been ignored, and that, "for over a year now, no solution has been sought by the defendant, who has waited right up until the last moment". On 13 March 2018, the authors filed an application for revocation, requesting a stay of eviction under article 704 of the Civil Procedure Act (No. 1/2000 of 7 January). Although the court processed the application, it did not suspend the eviction order, since an application for revocation does not have suspensive effects.

2.4 On 15 March 2018, a first attempt to evict the authors was made; however, the eviction was suspended when a representative of the owner on site agreed to postpone the eviction until 22 March 2018. On 16 March 2018, the authors again applied for a stay of eviction, this time requesting the judge to conduct an assessment of proportionality, in accordance with the case law of the Committee and of the European Court of Human Rights. Among other issues, they noted that the owner is a legal entity that owns more than 150 properties and they highlighted the risk of social exclusion for the family and the harm that would be done to their four children, two of whom have proven disabilities. In their application, the authors also recalled the various requests for public housing that they had made to both the Community of Madrid and Madrid city council since 2006, long before the owner's complaint was filed. However, attempts at the authors' eviction continued to be made.

¹ These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties in their observations and comments on the merits of the communication.

2.5 On 22 March 2018, a second attempt was made to evict the authors; this time, the eviction was suspended because a group of people blocked the authorities' access to the property. Once again, a representative of the owner agreed to postpone the eviction, this time until 11 April 2018.

2.6 On 11 April 2018, the authors were finally evicted. The authors' application for revocation of 16 March 2018 was rejected by the court on 26 June 2018 on the grounds that "it was rendered moot by the eviction".

2.7 Following the eviction, the municipal emergency social services of Madrid city council offered the authors accommodation free of charge at Hostal Welcome, where they stayed for about 10 days. This hostel is located in an industrial zone of the municipality of Vallecas; there are no shops, playgrounds, health, cultural or sports centres, schools, or train or metro stations in the surrounding area.

2.8 On 21 April 2018, the authors were relocated to a shelter called Pinar de San José, whose surroundings are similar to those of Hostal Welcome. There was no public transport near the shelter, and it took the authors 15 minutes to walk to the nearest bus stop when going to their children's school, which was located at the other end of Madrid. The children had to be up at 6 a.m. in order to get to school on time. In addition, the shelter was in poor condition: there were cockroaches and bedbugs, and shabby mattresses. The shelter had only five bathrooms for 40 people, and several families lived together in each room, so that the authors had no privacy (in particular Ms. El Goumari, who was pregnant). The shelter is located next to a centre for drug addicts, and people could be seen taking drugs in the vicinity.

2.9 The authors claim that, on 21 April 2018, the day on which they were relocated to the shelter, Madrid city council allocated at least 134 homes under the general housing scheme, but none under the priority care housing scheme.²

After the communication was registered

2.10 The authors stayed at the Pinar de San José shelter until 1 November 2018. On 6 July 2018, the group of persons staying at the shelter complained to Madrid city council of the abysmal conditions at the shelter, but did not receive a response. During their stay at the shelter, the authors were regularly asked to leave, because of the need to accommodate other people, but they were not offered alternative housing. The authors received no information about any alternatives prior to their eviction from the shelter, and so found themselves in a situation of constant uncertainty and distress. On 18 October 2018, when she was seven months pregnant, Ms. El Goumari miscarried. This prompted the non-governmental organization Plataforma de Afectados por la Hipoteca to stage a sit-in at the shelter in order to bring pressure to bear on the administration to ensure that no family was left without alternative housing.

2.11 On 1 November 2018, the family was relocated to Hostal Welcome, this time in worse conditions, as they were given just one room for the whole family, instead of the two that they had been allocated during their initial stay. They were subsequently also ordered to leave the hostel, even as Ms. El Goumari was still recovering from the loss of her pregnancy; they were given no alternative housing options. Once again, Plataforma de Afectados por la Hipoteca prevented the family's eviction from the hostel on 21 and 23 November 2018.

2.12 Soon thereafter, the authors were offered a place in the Alonso Martínez Hostel Era, where they stayed for two months, until February 2019. The authors were forced to leave the hostel because they had stayed the maximum time allowed. They were then offered a place at the municipal emergency social services centre – a place that was known to be overcrowded.³ The authors declined this alternative as they were able to move into the home of friends; they stayed there for some time.

2.13 The authors eventually found an apartment of their own, which they rent for €300 per month, in the so-called Cañada Real, an irregular settlement that is the hub of the drug trade

² The authors attach documentation supporting these statements.

³ The authors cite seven press reports taken from various Spanish media, including *El Confidencial*, *El Diario* and *El País*.

in Madrid and where crime abounds.⁴ This apartment does not constitute decent housing for various reasons. The family, which currently has eight members, following the birth of twins, has one bedroom and a living room. The apartment does not have a separate kitchen, so the family has to cook in the living room. It also does not have heating. The twins have to sleep in their stroller because there is nowhere else for them to sleep. Lastly, the rental contract is oral, which means that the family cannot register or apply for government assistance for the payment of rent, electricity or school bus fare for their children.

The complaint

3. In their initial communication, the authors claimed that their eviction and the State party's subsequent actions constituted a violation of article 11 (1) of the Covenant, since they did not have adequate alternative housing. The authors explained that the alternatives they were presented with following the eviction could not be considered as decent and adequate housing for a family, in particular for the children. The authors added that the public authorities had shown no indication that they would provide them with a permanent housing alternative.

State party's observations on admissibility and the merits

4.1 On 7 October 2019, the State party submitted its observations on the admissibility and the merits of the communication. In these observations, it first corrects some of the information reported by the authors. It states that the authors' basic needs, including laundry services, were provided for during the authors' stay at the Pinar de San José shelter. During that time, an attempt was made to relocate them to accommodation that was on the outskirts of Madrid, but still within the municipality. This offer was rejected by the authors on the grounds that they were far from their children's school and did not wish to share facilities with the people already living there. At the time of submission of the State party's observations, the authors were already renting out the apartment located in Cañada Real Galiana and had been contacted by the social services, which had resumed their work on the authors' case and were providing specific support for the minors and assisting and supporting Mr. Tidli in his job search. Given that the authors have found rental housing, the State party requests that the Committee discontinue its consideration of the communication.

4.2 Furthermore, on the merits of the communication, the State party argues that the family's basic needs are covered by the State. The family has free access to 1 of the 10 best health systems in the world; free access to the public education system, including the right to subsidized meals, for their children; a minimum subsistence income since 2004 and support from the social services in the search for employment; free legal aid; and access to free or subsidized basic supplies such as electricity, heating and water.

4.3 The State party argues that, both before and after the eviction, it went to great lengths to meet the housing needs of the authors and their family. After the first few months of the family's failure to pay rent, but before their eviction: (a) the Madrid Social Housing Agency assessed their case under the emergency housing programme, and subsequently denied them assistance; (b) the Municipal Housing and Land Company of Madrid city council assessed their case under the emergency housing programme, but the authors were not able to benefit because they did not meet the requirements; and (c) the municipal social services considered a request for temporary financial assistance for the payment of private rent, but was unable to process it because the authors did not provide a rental contract. After the eviction, the authors were offered various temporary alternatives before the family was able to find rental housing. Therefore, the needs of the family are being met by public funds, to the extent of available resources.

4.4 The State party argues that the right to housing is not an absolute right to be provided with housing by the authorities, if public resources are insufficient for the provision of such housing. The State party maintains that article 25 (1) of the Universal Declaration of Human Rights and article 11 (1) of the Covenant do not recognize an enforceable, subjective right,

⁴ The authors cite Spanish media, such as RTVE, *El Mundo* and *La Vanguardia*, that describe the situation in the settlement.

but rather establish a mandate for States parties to take appropriate steps to promote public policies aimed at improving access to decent housing for everyone. According to the case law of the Court of Justice of the European Union,⁵ the right enshrined in article 34 (3) of the Charter of Fundamental Rights of the European Union is not the right to housing but rather the right to housing assistance in social policies based on article 153 of the Treaty on the Functioning of the European Union. This State mandate has been expressly recognized in article 47 of the Constitution and various statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,⁶ the right to housing is “a constitutional mandate or guiding principle” that calls primarily for social measures but does not in itself constitute a separate area of competence of the State. It is therefore the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land for the common good in order to prevent speculation. This right, which is to be realized progressively, is thus fully protected by the State party, from a legal point of view, in line with its international obligations.

4.5 The State party argues that the two fundamental issues are: (a) that the State should cover the housing needs of those who do not have sufficient resources to gain access to housing, to the extent of the resources reasonably available to it, taking into account the situation of public finances; and (b) that when such resources are insufficient to cover all possible needs, housing allocations should be made on the basis of objective criteria and the principle of equality, so that they are satisfied in order of need.⁷

4.6 The State party understands that, for an individual communication to be admissible under article 11 (1) of the Covenant, the author must provide sufficient evidence (a) that he or she is in a situation of need inasmuch as he or she lacks the resources needed to gain access to the open housing market; (b) that the competent authorities have not devoted resources “to the extent possible” to meeting the housing needs of families in a genuine situation of social exclusion (including by adopting measures to facilitate access to and prevent withdrawal from the private housing market, by adopting emergency measures in cases where such withdrawal is legally appropriate as a transition to the public housing system, and by investing sufficiently in the public housing regime); (c) that, in the event that the available public resources are insufficient to cover all existing genuine needs, the allocation of scarce public resources has not been made in a rational and objective manner, addressing first and foremost the situations of those in greatest need; and (d) that he or she has not deliberately committed acts or been responsible for omissions that have kept him or her from receiving the assistance that is publicly available.

4.7 The State party submits that it adopted a number of measures to address the economic crisis: (a) to facilitate access to the private housing market, the State party offered personal income tax relief until 2013 and has allocated grants for subsidized loans and assistance for young people; in the case of rentals, it has granted rental subsidies to low-income families in order to facilitate their access to the private housing market, such as financial assistance for deposits and rental payments and specific financial aid for young people;⁸ (b) to keep property owners from leaving the private housing market, it has introduced legislation imposing a freeze on evictions⁹ and has adopted a code of good banking practices with a view

⁵ *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria*, Order of the Court of Justice of the European Union of 16 July 2015 in case C-539/14, para. 49.

⁶ Constitutional Court Judgments No. 152/1988, No. 7/2010 and No. 33/2019.

⁷ The State party cites general comment No. 7 (1997), according to which States have an obligation to “take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing ... is available” (para. 16).

⁸ The State party cites, inter alia, a loan subsidy programme, a programme to fund building assessment reports and a rental housing assistance programme under the 2018–2021 State Housing Plan.

⁹ The State party cites the preamble to Royal Decree-Law No. 5/2017 of 17 March, amending Royal Decree-Law No. 6/2012 of 9 March on urgent measures for the protection of destitute mortgagors and Act No. 1/2013 of 14 May on measures to strengthen the protection of mortgagors, debt restructuring and social housing rentals.

to avoiding defaults by making available private rentals with acceptable conditions;¹⁰ and (c) to avoid situations of urgent need arising from legitimate evictions being carried out before alternative legitimate housing, whether public or private, is available for the persons concerned, the judicial authorities have established protocols for coordination with the municipal social services prior to evictions, thus making it possible to assess the need for and provide emergency housing solutions.¹¹ The social services are responsible for assessing and following up on the needs of families, identifying and addressing housing emergencies and coordinating with the relevant autonomous communities to facilitate an orderly transition to the emergency housing regime.

4.8 The State party cites a report dated 9 July 2019 from the Madrid autonomous community, in which the latter explains the situation of the family in relation to the regulations applicable to its case. It explains that the family's public housing application has been accepted and that it has been allotted 14 points and holds the 258th place on the waiting list. Previously, in view of the family's eviction, the authorities had not initiated the emergency procedure for the allocation of public housing because the family did not comply with the legal requirements of article 18 of Decree No. 52/2016 of 31 May. For instance, the family did not meet the necessary requirements because the eviction was not due to a sudden decrease in the family unit's income; indeed, the family had been receiving a minimum subsistence income since 2004.

4.9 The State party states that, in the case of the authors' family, the facts show that there has been no violation of article 11 (1) of the Covenant insofar as (a) the social services were notified of all the scheduled eviction dates; (b) the local authorities have carried out assessments of the family's needs since 2003; and (c) both before and after the eviction, the State party endeavoured to find the authors a place to live, by making available remedies designed for temporary emergency situations and providing temporary accommodation until the authors found their current housing solution. In addition, the social services continue to be involved, in particular by supporting the minors and assisting and supporting Mr. Tidli in his search for a job. The State party therefore requests that consideration of the communication be dismissed on the merits.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 7 January 2020, the authors maintain that, during the period from 26 July 2017, when they were served a complaint for non-payment, until 11 April 2018, the date on which they were evicted, the State party did not provide them with any remedy involving finding them alternative housing, which in turn left them in a state of total uncertainty, and this despite the fact that the State party was aware of the family's difficult circumstances and their inability to pay rent well before the filing of the complaint for non-payment.

5.2 Furthermore, the Court of First Instance No. 69 of Madrid did not conduct a proportionality test regarding the eviction, even though it involved, on the one hand, a legal entity with considerable assets and many rental units and, on the other, a family, including minors with disabilities, in a situation of social exclusion. The Court could have delayed the eviction and strongly advised the local authorities to find the authors alternative housing.

5.3 As to the measures taken by the State party following the eviction, the authors claim not only that they were never provided with decent and adequate housing, but also that they were subjected to all manner of situations in various shelters and hostels, none of which could be considered adequate accommodation for a family with four children, including a pregnant mother and two children with disabilities. They claim that they were forced to move on multiple occasions to unsuitable housing units and that they lived in a state of constant

¹⁰ The State party explains that, between the adoption of the code of good practices (2012) and 2017, more than 24,000 evictions were suspended, more than 45,600 families benefited under the Code from 38,500 debt restructurings and the transfer of 7,000 titles in lieu of payment, and 9,020 housing units were awarded through the Social Housing Fund.

¹¹ The State party cites Royal Decree-Law No. 7/2019 of 1 March on urgent housing and rental measures, whereby socially vulnerable families may have their eviction suspended for up to one month, or three months if the owner is not a natural person.

uncertainty as to when they would be forced to leave those units, without having anywhere else to live. In particular, the authors stress that the State party neglects to mention in its observations that, along the way, Ms. El Goumari lost her baby at seven months' pregnancy. The authors also point out that, throughout this time and up to the present, they have applied for public housing and have complained to the authorities about their inadequate accommodation, but have received no response.

5.4 The authors insist that, although they have found a rental unit to live in, it is not adequate accommodation for the family, which currently has eight members. The authors point to the precarious conditions of both the rental unit and the rental arrangements, which, the authors claim, do not allow them access to the benefits mentioned by the State party.

5.5 The authors acknowledge that they have a right to public health and education, like all Spanish citizens, but submit that this cannot be used to justify the denial of another fundamental right, such as decent and adequate housing. Moreover, many of the rights mentioned by the State party have been undermined as a result of the authors' inadequate housing situation. The health of the family has suffered to such a point that the mother lost her baby at seven months' pregnancy; the children's education has been negatively affected by the prevailing uncertainty and the long distances they have had to travel to attend school; the minimum subsistence income is currently insufficient, as more than 40 per cent of it is spent on renting their apartment, which is in any case inadequate; and the subsidies for basic supplies mentioned by the State party are not currently available to the family owing to the precarious nature of their current rental arrangements.

5.6 As to the remedies allegedly made available by the State party prior to the eviction, the authors state that, as acknowledged by the State party itself, they were not implemented, but denied to the authors. Indeed, it is the Madrid Social Housing Agency that has denied them emergency housing; the Municipal Housing and Land Company of Madrid city council considers the family ineligible for the Emergency Housing Programme, despite the social services' recommendation that the family apply for housing under the procedure for situations of particular necessity. Temporary financial assistance is not a true remedy, since a family without a regular income and in a vulnerable situation cannot gain access to the rental market, regardless of whether such assistance exists. The authors claim that they tried to find rental housing on the real estate market and were unable to do so.

5.7 The authors claim that the State party did not take all appropriate measures to uphold their right to decent and adequate housing. Housing solutions involving hostels and shelters cannot be considered decent or adequate. Specifically, the authors claim that the State party has not complied with the Committee's recommendations with regard to another case;¹² these, if acted on, would have prevented the family's suffering.

5.8 The authors claim that, in particular, their children's rights as minors have been violated, as the local authorities have not considered the severe impact of the eviction on their educational development or the effects on other areas of their growth and personality development.¹³ The authors mention that the State party's own case law requires a judge to conduct an assessment of the proportionality of an eviction, in which the rights and interests of any children affected must be weighed up, and that failure to do so constitutes a violation of the children's rights.¹⁴ The authors argue that, in some housing allocation procedures, the applicant's family composition is taken into consideration. However, in the allocation of emergency housing, where the need for housing and urgent action is greater, neither the consequences nor the impact of evictions on minors are assessed. Such processes therefore do not observe the principles of protection of children and of the family.

5.9 The authors reject the assertion that the State party has taken all appropriate measures, to the maximum of its available resources, to uphold their right to housing. The authors state that they are unable to specify the number of persons who are in a situation that deprives

¹² *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 21.

¹³ The authors cite, in particular, the Convention on the Rights of the Child and general comment No. 4 (2003) of the Committee on the Rights of the Child, which establishes that the best interests of the child must be a primary consideration.

¹⁴ Supreme Court, Administrative Chamber, Third Section, Judgment No. 1797/2017.

them of access to decent and adequate housing. Nevertheless, they claim that Madrid city council has made unreasonable use of its available resources: for instance, in 2013, it sold 1,860 public housing units, and the Community sold 2,935, on the grounds that they were not needed. The Supreme Court itself has ruled that the second sale was illegal and therefore void.¹⁵ This situation demonstrates the huge gap between the duty set out in article 47 of the Constitution, which requires the public authorities to create the conditions and establish the standards that will effectively enable the exercise of the right to decent and adequate housing, and reality. A clear example of this is the fact that the authors have applied for public housing since 2006, to no avail. At the same time, the authors claim that the State party's financing is clearly insufficient, given that just 1.5 per cent of total housing in Spain is social housing – one of the lowest percentages in Europe.¹⁶

5.10 The authors maintain that they meet all the conditions, as listed by the State party, to be able to claim a violation of article 11 (1) of the Covenant,¹⁷ as: (a) they are undeniably in a situation of need, as their income is considerably below the minimum wage and clearly insufficient to gain access to decent housing for their family; (b) while the competent authorities have dedicated resources to alleviate the housing needs of the family, they have clearly been insufficient and inadequate and have not resolved their situation; (c) even assuming that the available public resources are insufficient, the State party has not demonstrated that the criteria for allocating housing are rational and objective: if a family with children, two of whom have disabilities, and in a situation of vulnerability, is not provided for, who then is?¹⁸ and (d) the family tried to apply for all the remedies available in the State party, many of which turned out not to be viable, owing to decisions by the administration, and the family accepted, on four occasions, the offers made to them for temporary housing, as the State party subjected the family to constant changes and uncertainty.

5.11 On the general measures taken by the State party to address the economic crisis,¹⁹ the authors argue that none of them are applicable to their case. They have no property that would enable them to receive tax relief; the owner had not registered the rental, so they were not eligible for any rental assistance; the code of good practices was not applicable to their case because they did not have a mortgage; Royal Decree-Law No. 7/2019 was adopted subsequent to their eviction (although the social services still requested a deferral of the eviction given the family's vulnerable situation); and the local authorities did not successfully coordinate their actions, as the authors' situation remains unresolved.

5.12 The authors claim that, contrary to the State party's assertion,²⁰ there has been a violation of their right under article 11 (1) of the Covenant because: (a) despite the fact that the social services were informed of the authors' situation, the State party never offered the authors an adequate and decent housing solution; (b) the local authorities' assessment of the family's need was not aimed at resolving the family's housing difficulties; (c) the solutions offered by the State party were neither decent nor adequate for the family and led to a drawn-out transitional situation that was detrimental to the family. Furthermore, the housing unit in

¹⁵ Supreme Court, Administrative Chamber, Third Section, decision of inadmissibility in case No. 5491/2019, 29 November 2019.

¹⁶ The authors cite Carme Trilla Bellart and Jordi Bosch Meda, "El parque público y protegido de viviendas en España: un análisis desde el contexto europeo", Working Paper, No. 197/2018, available at www.fundacionalternativas.org/public/storage/laboratorio_documentos_archivos/df921b0eb942d0ce4c114e5463934e1a.pdf, pp. 17–18.

¹⁷ See paragraph 4.6 above.

¹⁸ The authors add that, on 21 April 2018, the Municipal Housing and Land Company of Madrid city council allocated 134 dwellings from Madrid municipality under the general housing scheme, but none under the priority care housing scheme; that, on 25 May 2018, the same entity allocated 42 dwellings under the general and young people's regime, but, again, none under the priority care housing scheme; and that the Madrid Social Housing Agency knew that the family was not in a suitable position to be awarded housing under the procedure for situations of particular necessity and that the family did not meet the requirements under the emergency housing regime.

¹⁹ See paragraph 4.7 above.

²⁰ See paragraph 4.10 above.

which the family currently resides is substandard and therefore neither decent nor adequate; meanwhile, the social services are aware of the situation and have not provided a remedy.

B. Committee's consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 The Committee notes the State party's argument that, at the time of submission of its observations, the authors were already renting a home, and that therefore the reasons for the communication no longer existed and consideration of the communication should be discontinued. The Committee however notes the authors' allegations that the State party violated their right to decent and adequate housing in deciding to evict them, even though they had nowhere else to live, in providing only temporary alternative housing that was neither decent nor adequate, and currently, insofar as the housing unit that they occupy cannot be considered decent or adequate. The Committee is therefore of the view that the communication meets the requirement of referring to a potential violation of a right set forth in the Covenant, in accordance with article 2 of the Optional Protocol.

6.3 The Committee notes that the State party has not challenged the admissibility of the communication on the ground of non-exhaustion of domestic remedies and that there does not appear to be any remedy available to the authors that they have not exhausted. The Committee concludes that, with respect to the authors' claim relating to their eviction, the case meets the requirement of exhaustion of domestic remedies set forth in article 3 (1) of the Optional Protocol.

6.4 The Committee notes that the communication meets the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communication admissible and proceeds to its consideration on the merits.

C. Consideration of the merits

Facts and legal issues

7.1 The Committee has considered the present communication, taking into account all the information provided to it, in accordance with the provisions of article 8 of the Optional Protocol.

7.2 The Committee proceeds to determine which facts may be considered proven. In January 2015, the authors entered into a rental agreement with a legal entity for a home for their family, including their four minor children, two of whom had disabilities. In January 2018, the Court of First Instance No. 69 of Madrid declared the rental agreement terminated for non-payment of rent and ordered the authors to vacate the premises. When the authors failed to vacate the premises, the Court set 15 March 2018 as the initial date for the eviction. Despite two applications by the authors for a stay of eviction on account of their vulnerable situation, and a report from the social services requesting the same, the Court did not rule in favour of a stay of eviction, nor did it assess the proportionality of the eviction in consideration of the rights of the parties involved. After two failed attempts, the authors and their family were finally evicted in April 2018.

7.3 Following the eviction, the State party provided the authors and their family with accommodation in a hostel for about 10 days; then, in a shelter, where they stayed for more than six months, until November 2018; then back to the initial hostel for less than one month; and, finally, in another hostel for two months, until February 2019. The conditions in the shelters are alleged to be neither decent nor adequate to accommodate a family of six. The State party has not challenged the allegations or the documentation provided by the authors with regard to the conditions in the Pinar de San José shelter (overcrowding, poor sanitation and lack of privacy); it has merely mentioned that the basic needs of the authors and their family, including laundry services, were provided for free of charge during their stay. Finally, upon being forced to leave the shelter, the authors were offered an alternative housing

solution that they considered even worse than all those they had accepted thus far. At that point, the authors found a home to rent; this is where they currently reside, and the precarious rental contract arrangements make it impossible to gain access to various social benefits. The State party has not disputed the allegations or the documentation provided by the authors according to which they were repeatedly forced to leave the various temporary housing units in which they were staying, even when the authorities failed to provide them with an alternative housing solution, which in turn prompted the involvement of civil society to put pressure on the local authorities to provide the authors with alternative housing. During the authors' stay in one of the temporary housing units, Ms. El Goumari miscarried at seven months' pregnancy.

7.4 The authors claim that their eviction violated their and their children's right to adequate housing, as enshrined in article 11 (1) of the Covenant, as they were evicted without any consideration of the consequences of the eviction order or of the fact that they did not have alternative accommodation. They argue that the temporary housing provided did not meet the requirements of decent and adequate housing and that their constant relocation and the uncertainty to which they were subjected also violated their right under the Covenant. The authors further submit that the authorities did not grant the family public housing and continue to deny it to them. The State party maintains that the authors are on a waiting list for public housing and that the alternatives offered to the family constituted housing alternatives to the maximum of its available resources.

7.5 In the light of the facts that the Committee has deemed to be relevant, and of the arguments submitted by the parties, the question raised by the communication is as follows: whether the eviction of the authors and their children from their habitual residence and their subsequent transfer to various types of temporary housing constituted a violation of the right to adequate housing recognized under article 11 (1) of the Covenant. To answer this question, the Committee will first recall its case law on protection against forced evictions. It will then examine the specific case of the authors' eviction and address the issues raised in the communication.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights²¹ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.²² The right to housing should be ensured to all persons irrespective of income or access to economic resources²³ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.²⁴

8.2 Forced evictions are *prima facie* incompatible with the Covenant and can only be justified in the most exceptional circumstances.²⁵ The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and proportionality by weighing up the legitimate objective of the eviction and its consequences for the evicted persons.²⁶ This obligation arises from the interpretation of the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.²⁷

8.3 Thus, in order for an eviction to be justifiable, it must meet a number of requirements. Firstly, the limitation must be determined by law. Secondly, it must promote the general welfare in a democratic society. Thirdly, it must be proportionate to the aim pursued. Fourthly, the limitation must be necessary, in the sense that, where there are several means reasonably

²¹ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 1.

²² *Ibid.*, paras. 7 and 9.

²³ *Ibid.*, para. 7.

²⁴ *Ibid.*, para. 12.

²⁵ *Ibid.*, para. 18, and general comment No. 7, para. 1.

²⁶ *Ben Džazija et al. v. Spain*, para. 13.4.

²⁷ *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

capable of achieving the legitimate aim of the limitation, the one that is the least restrictive must be selected. Lastly, the benefits of the limitation in promoting the general welfare must outweigh the impact of the limitation on the enjoyment of the right. The more serious the impact on the author's rights under the Covenant, the greater the scrutiny that must be given to the grounds invoked for such a limitation. The availability of adequate alternative housing, the personal circumstances of the occupants and their dependants and their cooperation with the authorities in seeking suitable solutions are crucial factors in such an analysis. This inevitably involves making a distinction between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.²⁸ The State party will therefore be committing a violation of the right to adequate housing if it stipulates that a person whose rental contract is terminated must be evicted immediately, without regard to the circumstances in which the eviction order would be carried out.²⁹ The analysis of the proportionality of the measure must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. This authority must analyse whether the eviction is compatible with the Covenant, including with regard to the elements of the proportionality test required by article 4 of the Covenant as described above.³⁰

8.4 In addition, there must be a real opportunity for genuine and effective prior consultation between the authorities and the persons concerned, there must be no alternative means or measure less injurious to the right to housing available, and the persons concerned must not be left in or exposed to a situation constituting a violation of other Covenant or human rights.³¹

Duty of States to provide alternative housing to persons in need

9.1 Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.³² The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property.³³ In the event that a person is evicted from his or her home without the State party granting or guaranteeing alternative accommodation, the State party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned. The information provided by the State party should enable the Committee to consider the reasonableness of the measures taken in accordance with article 8 (4) of the Optional Protocol.³⁴

9.2 The obligation to provide alternative housing to evicted persons who need it implies that, under article 2 (1) of the Covenant, States parties should take whatever measures are necessary, to the maximum of their available resources, to uphold this right. States parties may choose a variety of policies to achieve this purpose.³⁵ However, all measures adopted should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right³⁶ as swiftly and efficiently as possible. Policies on alternative housing in cases of eviction

²⁸ *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 11.5.

²⁹ *Ibid.*, para. 11.7.

³⁰ *Ibid.*

³¹ *Ben Djazia et al. v. Spain*, para. 15.1.

³² General comment No. 7, para. 16.

³³ *Ben Djazia et al. v. Spain*, para. 15.2.

³⁴ *Ibid.*, para. 15.5. See also the Committee's statement regarding an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

³⁵ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8 (c). See also para. 13.

³⁶ Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.³⁷

9.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any given context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected.³⁸

9.4 In certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate housing alternative may be used. However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing.³⁹ It must also take account of the right of members of a family not to be separated⁴⁰ and to enjoy a reasonable level of privacy.

Analysis of the proportionality of the authors' eviction

10.1 The Committee will consider whether the authors' eviction from the dwelling they were occupying constituted a violation of their right to adequate housing or whether the authorities' intervention constituted a justified limitation on their right to housing in accordance with article 4 of the Covenant. The authors have not claimed that due process guarantees were not observed, and none of the information before the Committee suggests that the process was arbitrary.

10.2 The Committee recalls that the right to private property is not a Covenant right, but recognizes that the State party has a legitimate interest in ensuring protection for all rights established in its legal system so long as this does not conflict with the rights contained in the Covenant.⁴¹ It was established by the judicial authorities that the authors had failed to pay their rent, which constituted grounds for terminating their contract; the Committee therefore considers that there were legitimate reasons for the authors' eviction.

10.3 However, despite the authors' claim that the eviction would affect their right to adequate housing, the Court did not consider the proportionality of the eviction by weighing up the legitimate objective of the eviction and its consequences for the evicted persons. At no time did the Court assess the vulnerability of the authors or, in particular, their minor children, even though the authors requested such assessment and the Court received a report from the social services requesting the same. Although the eviction was twice deferred, these deferrals were not prompted by a decision of the courts, but rather by events that occurred on the day of the planned eviction and that made it impossible to carry out. Furthermore, the State party's legislation did not provide the authors with any other judicial mechanism through which to challenge the eviction order that would have given another judicial authority the opportunity to analyse the proportionality of the eviction and the conditions in which it was going to be carried out. The Committee finds, therefore, that the failure to

³⁷ See, for example, the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context (A/HRC/31/54), paras. 28–38.

³⁸ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8.

³⁹ *López Albán v. Spain*, paras. 9.1–9.4.

⁴⁰ *Ibid.*, para. 9.3.

⁴¹ *Ibid.*, para. 11.5.

conduct such an assessment constitutes a violation by the State party of the authors' right to housing under article 11 of the Covenant, read in conjunction with article 2 (1).

10.4 The Committee notes that, subsequent to the events described in the present communication, the State party promulgated new legal rules: under these new rules, judges are required to inform the social services of evictions involving persons in situations of vulnerability, so that the social services may in turn report on the situation of the persons to be evicted; if the persons are found to be vulnerable, the eviction may be suspended to allow the social services to provide assistance for a maximum period of one month, to be extended to three months if the party seeking the eviction is not a natural person.⁴² The Committee understands that these legal rules could prevent violations of the right to housing such as the one found in these Views insofar as they allow judicial or other impartial and independent authorities with the power to order the cessation of the violation and to provide an effective remedy to assess the proportionality of eviction requests under the terms mentioned above.

The temporary housing provided to the authors after the eviction

11.1 The Committee will consider whether the housing alternatives provided by the State party following the eviction constitute adequate alternative housing (para. 9.3 above). The Committee notes that the alternatives offered – hostels and shelters for short stays – cannot be considered to be alternative housing. The Committee will therefore consider whether the temporary accommodation complied with standards of dignity and safety and security and whether it was merely a preliminary step towards adequate housing, rather than a permanent solution (para. 9.4 above).

11.2 On the first point, the Committee understands that the concepts of dignity and safety and security cover, *inter alia*, stability and certainty, notwithstanding the temporary nature of the accommodation in question; conditions of hygiene at the alternative dwelling; and the privacy available to individuals according to their needs. In that connection, the Committee takes note of the conditions at the Pinar de San José shelter (overcrowding, poor sanitation and lack of privacy). The Committee understands that, although the State party claims that it offered the authors housing that was on the outskirts of Madrid, but still within the municipality, this option was located even further from the school of the children, two of whom have disabilities, and who already had a long trip to school every day. Additionally, the Committee notes that, during the authors' stay at the Pinar de San José shelter, at Hostal Welcome (the second time) and at the Alonso Martínez hostel, they were constantly threatened with eviction but were not offered alternative housing, temporary or otherwise. The Committee notes that this prompted civil society to take action with a view to resolving the authors' situation of uncertainty and improving their conditions of accommodation. The Committee notes that, during these months of stress and uncertainty, Ms. El Goumari miscarried when she was seven months pregnant. The Committee cannot consider that these conditions were in keeping with the dignity of the authors and their children, especially since they were the result of an eviction carried out in violation of the Covenant.

11.3 With regard to the temporary nature of the accommodation offered, although the temporary accommodation was not offered as a permanent solution, the Committee is of the view that the State party has not demonstrated that the housing provided to the authors was merely a preliminary step towards adequate housing. Moreover, the authors found themselves in constant threat of having to leave the hostels or shelters even though they had not been offered alternative temporary accommodation.

11.4 As to the authors' current dwelling, the Committee cannot consider it as adequate housing, given that the rental contract arrangements make it impossible for the authors to gain access to all the benefits that the State party itself mentions in its observations and that one room for a family of eight people is well above the limit of three persons per room that the Department of Economic and Social Affairs of the United Nations Secretariat has defined

⁴² See art. 441 of the Civil Procedure Act (No. 1/2000 of 7 January), as amended by Royal Decree-Law No. 7/2019 of 1 March on urgent housing and rental measures.

as overcrowding, and therefore cannot be said to meet the requirements of adequate housing.⁴³

11.5 Finally, the Committee finds that, beyond the aforementioned general measures, the State party has not demonstrated that it considered the particular circumstances of the authors' case and took all reasonable measures to the maximum of its available resources. For these reasons, and because the situation was the result of an eviction carried out in violation of the Covenant, the Committee considers that the temporary housing and the situations to which the authors and their family were subjected, as well as the housing unit in which they currently reside, constitute a violation of the authors' right to housing under article 11 of the Covenant.

D. Conclusion and recommendations

12. On the basis of all the information provided and in the particular circumstances of this case, the Committee considers that the eviction of the authors and their children without an assessment of proportionality by the authorities constituted a violation of their right to adequate housing. In the same way, the Committee considers that the temporary housing allocated to the authors and the process to which the authors were subjected constituted, in themselves, a violation of their right to adequate housing.

13. The Committee, acting under article 9 (1) of the Optional Protocol, finds that the State party violated the right of the authors and their children under article 11 (1) of the Covenant, read in conjunction with article 2 (1), and in accordance with the requirements of article 4. In the light of the Views in the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the authors and their children

14. The State party is under an obligation to provide the authors and their children with an effective remedy, in particular: (a) if they are not currently in adequate housing, it must reassess their state of necessity and their level of priority on the waiting list, taking into account the length of time that their application for housing has been on file with the Community of Madrid, starting from the date on which they applied, with a view to providing them with public housing or taking some other measure that would enable them to live in adequate housing, bearing in mind the criteria set out in the present Views; (b) it must provide the authors and their children with financial compensation for the violations suffered; and (c) it must reimburse the authors for the legal costs reasonably incurred in submitting this communication.

General recommendations

15. The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party has an obligation to:

(a) Ensure that the normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation of their Covenant rights to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;

⁴³ *Principles and Recommendations for Population and Housing Censuses, Revision 2* (ST/ESA/STAT/SER.M/67/Rev.2), available at https://unstats.un.org/unsd/publication/seriesM/seriesm_67Rev2e.pdf, p. 301.

(b) Take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only following genuine consultation with the persons concerned and once the State has taken all essential steps, to the maximum of its available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children or other persons in vulnerable situations;

(c) Take all the necessary measures to ensure that, in cases where the State party offers temporary accommodation because it cannot immediately provide an adequate housing alternative, the temporary accommodation must meet standards of dignity and security. The State party must ensure that, even if the temporary accommodation is merely a step towards obtaining adequate housing, the persons living in it enjoy reasonable stability, notwithstanding the temporary nature of the accommodation in question, especially in cases involving families, older persons, children and/or persons in vulnerable situations;

(d) Develop and implement, in coordination with the autonomous communities and to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4.⁴⁴ This plan should provide for the necessary resources, measures, time frames and evaluation criteria to enforce these individuals' right to housing in a reasonable and measurable manner.

16. In accordance with article 9 (2) of the Optional Protocol and rule 18 (1) of the provisional rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee. The State party is also requested to publish the Views of the Committee and to distribute them widely, in an accessible format, so that they reach all sectors of the population.

⁴⁴ See also the Committee's concluding observations on the sixth periodic report of Spain (E/C.12/ESP/CO/6), para. 36.